IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Hackett v. Metcap Living Management Inc.,* 2020 NSSM 18

2020 Claim No. 484092

BETWEEN:

GERALD HACKETT

Claimant

- and -

METCAP LIVING MANAGEMENT INC. and STRATEGIC ATLANTIC LTD.

Defendants

Hearing Date: January 30, 2020

Final Written Submissions: May 29, 2020

Appearances:

Claimant – Kyle B. Campbell
Defendants – Ryan Baxter and Carolyn Suley

DECISION and ORDER

[1] This is a claim for $22,098 for unpaid wages said to arise by being paid less than minimum wage during the Claimant's course of employment with the Defendants between 2014 and 2016.

[2] The Claimant worked for the Defendants as a Resident Manager from July 2014 until the termination of her employment in January 2017. The Claimant previously filed a complaint with the Director of Labour Standards in March, 2017, and was issued an Order in June requiring the Defendants to pay to the Claimant approximately $4,000, less statutory deductions. This represented what was found to be the unpaid minimum wages for a six-month period prior to the date of making the complaint, i.e., for the period September, 2016 – March, 2017 which was the maximum period permitted under the complaint provisions of the *Labour Standards Code*, R.S.N.S.1989, c. 246. The claim in this Court is for the periods of time from the beginning of her employment in July 2014 up to September 2016.

[3] The Defendants deny the claim and among other defences rely on the *Limitations of Actions Act*, S.N.S. 2014, c. 35.

[4] As well, the Defendants have counterclaimed for $25,000 in respect of the misappropriation of rent payments which the Defendants say the Claimant, along with his Resident Manager partner, Angela Cassie, misappropriated. In his Statement of Defence to the Counterclaim, the Claimant states that the

Defendants had private insurance and had been made whole for all losses resulting from any actions of Claimant. Further, it is stated that the Defendants' insurer pursued their right of subrogation and have an Order against the Claimant.

[5] At the hearing on November 18th, I had this file along with the file of Angela Cassie *v. Metcap Living Management Inc. and Strategic Atlantic Ltd.*, SCCH 484091. Ms. Cassie was the partner of Mr. Hackett at the relevant time and was the Co-Resident Manager with him during all relevant time periods. Given potential significant issues of credibility, Mr. Baxter requested that Mr. Hackett be excluded from the hearing room until his evidence was called, a request which I granted. However, it meant that I was not able to hear the two cases together.

[6] Ultimately, this case, SCCH 484092, was heard on January 30, 2020. The decision in this matter is being issued contemporaneously with the decision in Cassie *v. Metcap Living Management Inc. and Strategic Atlantic Ltd.*, SCCH 484091.

Facts

[7] At the hearing on January 30, 2020, Mr. Hackett and Ms. Cassie gave evidence. For the Defendant, Angie Craig, a Senior Property Manager, gave evidence. Ann Knott, the Payroll Manager for the Defendants and Teddy Zaghloul, the Senior Property Manager at the relevant time, also gave evidence.

[8] Both counsel have accurately summarized the evidence in their written briefs. Accordingly, I take the liberty of duplicating some portions from their briefs in my outline the relevant evidence. As well, where necessary or appropriate, I will refer to additional facts that emerged from the evidence, both *viva voce* and documentary, in the analysis section of these reasons.

[9] Ms. Cassie and Mr. Hackett worked as resident manager couple with the Defendant, Metcap Living Management Inc. (**"**Metcap")[1], under a written contract dated July 25, 2014. The contract provided for compensation in the amount of $15,000.00 per annum, to be split equally between both employees (Ms. Cassie and Mr. Hackett) and to be paid semi-monthly, along with the provision of a two-bedroom apartment with a stated value of $650.00 per month.

[10] Metcap is a property management company based out of Ontario with operations in various provinces, including Nova Scotia. Metcap is responsible for the management of residential apartment buildings.

[11] As part of the management of residential apartment buildings, Metcap hires residential managers to oversee portfolios of apartment buildings. A residential manager's roles and responsibilities include cleaning common areas, safety checks, allowing contractors access to the buildings, answering tenant calls and accepting rent payments. Typically the resident manager lives in the building (or one of the

[1] While there are two named defendants, Defence counsel represents them both. It was agreed with Claimant's counsel that Metcap would assume the defence of this matter. Accordingly, when referring to the Defendant, I am referring to Metcap. However, the ultimate order affects both named defendants.

buildings) for which they are responsible and are provided with the apartment as part of their compensation. It apparently is a common arrangement in the residential rental business in Halifax and no doubt in other areas.

[12] Under the employment contract, Ms. Cassie and Mr. Hackett were jointly responsible for the apartment buildings at 6, 8, 9, 14 Galaxy Avenue and 384.5 Portland Street in Dartmouth, Nova Scotia.

[13] There are approximately 12 units in three of the buildings and 9 units in one of the buildings on Galaxy Avenue. Each building on Galaxy Avenue is three-story's tall. There are approximately 21 units in the four-story building on Portland Street.

[14] Ms. Cassie and Mr. Hackett worked for the Defendant from July, 2014, until January 20, 2017, when they were terminated. A letter was hand delivered to them on that date, the contents of which read:

> *January 20, 2017*
>
> *Dear Gerald and Angela:*
>
> *This letter will confirm the termination of your employment as Resident Manager Couple, effective immediately.*
>
> *You failed to follow company procedures by not maintaining proper records or posting payments correctly to tenant accounts. Payments have found to be missing and unaccounted for which has prompted further investigation.*
>
> *We have been observing your job performance and you have not been property completing your job assignments as they were handed to you.*
>
> *We evaluated the situation and we are not able to allow these issues go any further.*
>
> *You will receive the following payment along with your record of employment in the next several days:*
>
> - *1(one) week in lieu of notice*
> - *Vacation Pay Accrual*
>
> *In addition, as part of your employment contract and pursuant to the provisions of the Nova Scotia Residential Tenancies Act, you are required to deliver the apartment vacant within seven(7) days of your last day of employment, which is one week from today and the power will be disconnected that same day. You will no longer be permitted on MetCap Property without permission from a Property Manager after this date.*
>
> *Please make arrangements to gather up your personal possessions and to return to MetCap anything belonging to it – computer information, passwords, hardware, telephone,*

passwords, hardware, telephone, pass keys etc immediately to a Property Manager.

Yours truly,

Teddy Zaghloul
Senior Property Manager
MetCap Living Management Inc.

Angie Craig
Property Manager
MetCap Living Management Inc.

[15] Ms. Cassie and Mr. Hackett both acknowledged that they were terminated for theft.

[16] As stated, the contract of employment, which was entered in as Exhibit 1, tab 1, provides that the salaried rate of pay was $15,000.00, split equally between Ms. Cassie and Mr. Hackett, amounting to $7,500.00 each. Additionally, they received an apartment benefit which according to the contract of employment, was valued at $650.00 per month. Split equally, the benefit amounts to $325.00 each.

[17] The contract of employment stated the hours of work as being from 8:00 am – 5:00 pm., to be available to answer any leasing calls until 8:00 pm., and be on call 24/7 for emergencies. Mr. Hackett and Ms. Cassie testified that their position as a Resident Manager couple was a full-time position for both, and that they worked on average nine (9) hours per day.

[18] On this last point, there is a significant divergence in the evidence.

[19] For the Defendant, Mr. Zaghloul testified that Ms. Cassie and Mr. Hackett were collectively expected to work between 20-25 hours a week and that these were small buildings and, for the number of units under their supervision, that would be all the hours they would actually work in the run of a week.

[20] There was a significant amount of evidence from the Defendant's witnesses on this point. As will be seen, ultimately I have made my decision on two other legal bases, which are not tied to the factual issues of what actually were the number of hours worked. Therefore, I see no need to outline or analyze in detail the evidence relating to the amount of hours actually worked.

[21] Ms. Cassie and Mr. Hackett filed complaints on January 23, 2017 under the *Labour Standards Code* for unpaid termination pay, claiming they should have received a minimum of two (2) weeks' pay in lieu of termination pay and vacation pay. Then, on March 7, 2017, they added a claim for unpaid pay for failure to pay minimum wage. In accordance with Section 81 of the *Code*, the claims were limited to the six (6) months preceding the date of making the claim (from September 2016 to the date of the complaint of March 7, 2017).

[22] The latter claims were for unpaid pay based on the allegation that they were not paid at least

minimum wage for all hours worked. The Director stated that it was undisputed that the Complainant worked a minimum of 40 hours per week. It appears that the Director arrived at this conclusion on the basis of the hours recorded on the Ms. Cassie's and Mr. Hackett's semi-monthly pay records.

[23] On June 13, 2017, the Director of Labour Standards issued Orders requiring the Defendant to pay Ms. Cassie $3,938.02 and to pay Mr. Hackett $3,834.02 less statutory deductions, reflecting unpaid minimum wages and accrued vacation pay dating back to September, 2016.

[24] The Defendant appealed the Orders of the Director on June 20, 2017. The Defendant apparently did not dispute the calculation of the amounts owed to each, but sought to offset the amount of money they had stolen. These appeals were dismissed by the Labour Board on August 18, 2017, finding that the defence of set off was not available to the Defendant, and affirmed the Orders issued by the Director of Labour Standards.

[25] These present claims were filed with the Small Claims Court on January 11, 2019. The claims are based on the allegation that the Claimants were paid less than minimum wage for the period July, 2014 – September, 2016, this being the period of time to which the *Labour Standards Code* did not extend to.

[26] The amount claimed by each is $21,248.62 comprising the following:

- $4,153 allegedly due for being paid less than minimum wage in 2014,
- $10,279.86 allegedly due for being paid less than minimum wage in 2015,
- $6,815.46 allegedly due for being paid less than minimum wage in 2016.

Issues

[27] The issues that I will consider are as follows:

- *Limitations of Action Act*
- *Labour Standards Code* – Complete statutory regime?

Limitation of Action Act

[28] In its written Statement of Defence, the Defendant has pled the *Limitation of Action Act*. And, while not pleaded, in mid-May I raised the issue of the potential application of the *Act* to the counterclaim and invited submissions on that issue. Both counsel provided written submissions on this point and I take the opportunity to express my gratitude for so doing.

[29] The general rule of the current *Limitation of Actions Act* is contained in Section 8 of the *Act* and reads as follows:

> *8 (1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of*
>
> > *(a) two years from the day on which the claim is discovered; and*
> >
> > *(b) fifteen years from the day on which the act or omission on which the claim is based occurred.*
>
> *(2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known*
>
> > *(a) that the injury, loss or damage had occurred;*
> >
> > *(b) that the injury, loss or damage was caused by or contributed to by an act or omission;*
> >
> > *(c) that the act or omission was that of the defendant; and*
> >
> > *(d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.*

[30] Also, of potential relevance here is Section 23 of the *Act* :

> *23 (1) In this Section,*
>
> > *(a) "effective date" means the day on which this Act comes into force;*
> >
> > *(b) "former limitation period" means, in respect of a claim, the limitation period that applied to the claim before the effective date.*
>
> *(2) Subsection (3) applies to claims that are based on acts or omissions that took place before the effective date, other than claims referred to in Section 11, and in respect of which no proceeding has been commenced before the effective date.*
>
> *(3) Where a claim was discovered before the effective date, the claim may not be brought after the earlier of*
>
> > *(a) two years from the effective date; and*
> >
> > *(b) the day on which the former limitation period expired or would have expired.*

[31] The main issue that often arises where a limitations defence is argued relates to when the time period starts to run, which most typically is when the claim is discovered. This is referred to as "the discoverability rule," which has been codified in subsection (2) of Section 8 of the *Act* and has four components in the Nova Scotia legislation. All of these four components are to be objectively viewed and this is made clear by the explicit language "…*or ought reasonably to have been known.*"

[32] The Defendant has referred to the case of *Schitthelm v. Kelemen*, 2017 ABQB 546, as authority for the proposition that a claim related to unpaid wages crystalizes when an employee receives a pay cheque or is otherwise made aware of his or her financial compensation.

[33] The evidence here indicated that Ms. Cassie and Mr. Hackett each received their bi-monthly pay by automatic deposit and at the same time or shortly thereafter received an electronic or physical pay confirmation statement which gave them the details of the pay they received. Ms. Cassie and Mr. Hackett received such at some point in mid- August 2014 as their employment had commenced in late July 2014 and, they received their first pay on or before August 15, 2014. I would infer that a paystub was received either on or about August 15th or shortly thereafter.

[34] On the authority of the *Schitthelm* case, they became aware of the claim when they received their pay and pay confirmation statement.

[35] In the *Schitthelm* case the Court states (paras 212-213):

> *212 The Limitations of Actions Act bars Mr. Kelemen from recovering unpaid wages unless he seeks an order within a defined time period: section 3(1)(a) of the Limitations of Actions Act. The legislative requirement is that he must seek recovery within two years of when he first knew, or ought to have known that:*
>
> > *a. he was not being paid what he was owed under his Executive Employment Agreement;*
> >
> > *b. the unpaid wages were attributable to conduct of the Simo Corporation; and*
> >
> > *c. the unpaid wages warranted bringing a proceeding.*
>
> *213 Mr. Kelemen ought to have known that he was not being paid his annual salary of $200,000 and that Simo Corporation was liable for these unpaid wages when payment was due: section 3(1)(a)(i) and (ii) of the Limitations of Actions Act. <u>That knowledge would have become known to Mr. Kelemen each time he received a paycheque or payroll deposit</u>. The unpaid wages warranted bringing a proceeding when payment was not made insofar as they were for a relatively serious amount of money ($56,000 annually): section 3(1)(a)(iii) of the Limitations of Actions Act.*
>
> [Emphasis added]

[36] The relevant questions here – that is the four requirements of Section 8(2) in this case may be usefully formulated as follows:

> On what day did Ms. Cassie and Mr. Hackett first know or ought reasonably to have known?
>
> (a) that they were not being paid the minimum wage for the hours they say they worked for the Defendant;
>
> (b) that the unpaid amounts were due to an act or omission;
>
> (c) that the act or omission was that of the Defendant; and
>
> (d) that the unpaid wages, i.e. the loss, was sufficiently serious to warrant a proceeding.

[37] Items (b) and (c) are clearly satisfied here and require no further comment.

[38] As to item (a), it is my view and I so find that a reasonable person in the position of Ms. Cassie or Mr. Hackett who, if they were working the hours that they say they were working, would have known that they were effectively receiving something in the range of $5 - $6 per hour and would have known that this was significantly less than the minimum wage. They had at that time, sufficient knowledge of the facts that might give rise to an action or a complaint.

[39] This finding satisfies the first element of the discoverability criteria that the individual knew or ought reasonably to have known that the loss had occurred. This would have taken place on the day that they received the pay statement which, as I have already indicated above would have been very near or shortly after August 15, 2014.

[40] Further, in relative terms the amount in question that Mr. Hackett says he was underpaid was underpaid, again, on the basis that they were working the hours they say they were working, would have constituted a significant amount of money. As such, this would establish the fourth factor of the criteria that the loss in question was sufficiently serious to warrant a proceeding. In this regard I note the concluding words of paragraph 213 quoted above in the *Schitthelm* case:

> *The unpaid wages warranted bringing a proceeding when payment was not made insofar as they were for a relatively serious amount of money.*

[41] Based on the preceding, the claim for the alleged underpayment of August 15, 2014, was discovered on that date. The effective date of the current *Limitations of Actions Act* was September 1, 2015 which means the transitional provision in Section 23 has application, in particular Subsection 23(3) which I again quote:

> 23(3) Where a claim was discovered before the effective date, the claim may not be brought after the earlier of
>
> (a) two years from the effective date; and
>
> (b) the day on which the former limitation period expired or would have expired

.

[42] I understand that the former limitation period would have been six years. Therefore, Section 23(3)(a) applies which means that for any of the alleged unpaid minimum wage claims Mr. Hackett asserts for the pay periods up to September 1, 2015, the limitation period would be September 1, 2017.

[43] For the pay period of September 15, 2015, the limitation period would have expired two years after that, being on September 15, 2017.

[44] Similarly, the claim which he would have potentially had for the pay period ending September 30, 2015, would have expired on September 30, 2017. Each succeeding pay period would be subject to a two year limitation period. It is this which is referred to as a "rolling cause of action" and was commented on in the case of *Higgins v. Gatti*, 2019 NSSM 11.

[45] Against this, the Claimant submits that he did not discover he had a claim for unpaid minimum wage until he was informed about that by the Director of Labour Standards in early 2017. With respect, I find that submission unconvincing. I refer to the case of *Smith v. Parkland Investments Limited*, 2019 NSSC 74, where Justice Jamieson made the following comments (para 64):

> *"Discoverability" means knowledge of the facts that may give rise to the action. The knowledge required to start the limitation period running is more than mere suspicion but less than exacting knowledge. The discovery of the claim does not require that Dr. Smith knew her claim against the Town was likely to succeed. The limitation period runs from when Dr. Smith had or ought to have had knowledge of a potential claim. The discovery of additional facts at a later date does not postpone the discovery of the claim.*

[46] Similarly, in the Ontario case of *Jogosky v. Corporation of the Town of Huntsville*, 2010 ONSC, the Court stated (para 26):

> *A plaintiff does not need to know the precise cause of injury before the limitation period starts to run or the full extent of the loss suffered. Such a threshold for the commencement of a limitation period "places the bar to high." Instead, a plaintiff need only know enough facts to base its allegation against the defendant*.

[47] This statement was quoted with approval in the *Parkland* case at para. 79.

[48] These statements of principle support my conclusion that the limitation period with respect to the alleged failure to pay minimum wage commenced on the date that the Claimant received advice of what her pay was. At that stage he had the subjective knowledge and the objective knowledge of a reasonable person, of the facts giving rise to the potential claim.

[49] The Claimant has argued in the alternative the application of Section 8(1)(b) which provides for a 15 year limitation period from the date of the occurrence of the act or omission. It is said that the failure by the Defendant to post minimum wage orders constituted a wilful misleading of the loss or whether it was sufficiently serious to warrant a proceeding. This is based on Section 17 which reads:

> *17 The limitation period established by clause 8(1)(b) does not run during any time in which the defendant*
>
> *(a) wilfully conceals from the claimant the fact that injury, loss or damage has occurred, that it was caused by or contributed to by an act or omission or that the act or omission was of the defendant; or*
>
> *(b) wilfully misleads the claimant as to whether the injury, loss or damage is sufficiently serious to warrant a proceeding*.

[50] With respect, I do not consider this to be a wilful concealment.

[51] Moreover, and more fundamentally, that provision only relates to Subsection 8(1)(b) which would only have application if and only if Subsection 8(1)(a) did not apply and that would only be the case if the claim was not discovered at all or was not discovered for 15 years after the date of the act or omission in question. In this present case, the claim was obviously discovered. If nothing else, that is certainly made clear by the fact that a proceeding was filed.

[52] Section 8(1)(b) has no application in this case however one views it. It follows therefore that Section 17 has no application.

[53] The claim here covers the period of August 2014 – September 2016. That means the last time that the Claimant could have filed would have been in September 2018, and, at that point it would have been for one pay period only. In all events, a filing in January 2019 is well outside of the two year limitation period for all pay periods in question and therefore the Claimant's claim must be dismissed in its entirety.

[54] I turn now to the Counterclaim. This was filed on February 19, 2019. It is also subject to a two year limitation period as set out in Section 8 of the *Limitations of Action Act*. The Counterclaim, which was originally for a judgment up to $25,000 was amended at the hearing to a claim for $1,000 which represents the deductible portion of the insurance that the Defendant had. It is based on the misappropriation of funds by the Claimant. The question also arises here of when this claim was discovered or discoverable by the Defendant. The Claimant was terminated by letter dated and effective as of January 20, 2017. Among other things, the letter of termination which was to both Angela Cassie and Gerald Hackett stated:

> *Payments have found to be missing and unaccounted for which has prompted further investigation.*

[55] According to Ms. Cassie's and Mr. Hackett's evidence, they were terminated for theft, fraud, and falsifying records.

[56] In my opinion the two year limitation period started January 20, 2017. I base this on the evidence of Ms. Cassie and Mr. Hackett as well as the explicit statement in the letter from the Defendant that, "payments have found to be missing and unaccounted for which has prompted further investigation."

[57] In my view, this is a clear indication of knowledge that the Defendant had at that time of facts which, based on the case law previously cited, indicates subjective knowledge that meets the required standard. I refer again to the statement by Justice Jamieson in the *Smith v. Parkland Investments Limited* case that:

> "*Discoverability" means knowledge of the facts that may give rise to the action. The knowledge to start the limitation running is more than mere suspicion but less than exacting knowledge.*

[58] As well, I would refer to the statement in the *Jogosky* case that:

> A *plaintiff does not need to know the precise cause of injury before the limitation period starts to run or the full extent of the loss suffered.*

[59] With respect, I do not accept the submission by the Defendant that Metcap did not fire Ms. Cassie for theft or fraud and that Metcalf was not aware of the fraud or theft at the time of her termination of employment. I repeat the language of the Defendant in the termination letter:

> *Payments have found to be missing and unaccounted for which has prompted further investigation*.

[60] I accept that the extent of the misappropriation was not discovered until some later period of time once a full investigation had been done. In a case such as this, that will often be the case. That is, often there will be sufficient evidence of misappropriation of funds to terminate the employee. From the employer's point of view, that must be done swiftly to avoid further losses. Following that, a detailed review of the accounting, banking, and other records, will disclose the full extent of the loss.

[61] It is clear from the case law that it is not necessary for a claimant to know the full extent of the loss before the limitation period starts to run. Rather, it need only to have some facts that give rise to the action and base an allegation on.

[62] With respect to the amendment of pleadings and potential prejudice, I say this. I accept that the

Defendant may well have put further evidence in dealing with the issue of when the claim was discovered. However, on the basis of the law I have quoted and the test for whether there were sufficient facts to start the time limit running, which I found there were, I conclude that it would not have made any difference ultimately.

[63] Further, the burden is on the Defendant (Claimant by Counterclaim for purposes of this point) to establish that the claim was filed within the limitation period. I note that in the Counterclaim, the Defendant states at paragraph 5 that the "extent of the misappropriation was neither discovered nor discoverable until in or around spring 2017. That such a statement was included in the pleading makes it apparent that the Defendant was alive to the potential issue of limitations being raised in relation to the Counterclaim. And while it was not specifically pleaded by the other side, I would infer that based on the knowledge that the statement in paragraph 5 demonstrates that the conscious decision was taken to not pursue that tact in terms of the evidence that was brought out.

[64] For all these reasons I dismiss the argument and I find that the limitation period of two years would have expired on January 20, 2019. As already stated, the Counterclaim was filed on February 19, 2019, and therefore is out of time. The Counterclaim will be dismissed for that reason.

Labour Standards Code – Complete Statutory Regime

[65] In its written submission of February 28, 2020, the Defendant argues that the Labour Standards Code provides for a comprehensive statutory regime dealing with various matters including, significantly hereto, for claims of failure to pay minimum wage. On the authority of *Fredericks v. 2753014 Canada Inc.*, 2008 NSSC 377, a person may pursue a claim for pay in a form alternative to the Code but not in addition.

[66] Justice Duncan stated as follows (paras 40-42):

> *40 In my view the legislature, in enacting section 82, preserved the right of an employee to pursue a claim for unpaid pay in an alternative forum to that provided by the Code, but not in addition thereto. Once the employee elects his/her forum they are obligated to exhaust that remedy. The right to seek court intervention then is determined by the process selected.*
>
> *41 In this case, having chosen to initiate a complaint under the Code, the plaintiff was required to rely on the dispute mechanism provided therein. Judicial review would only be engaged in accordance with section 20 of the Code. If the claim had been initiated in the court, then it could not also be pursued with Labor Standards.*
>
> *42 In such claims, there may be tactical or substantive advantages to the choice of forum made by an aggrieved employee. It is not in the interests of an efficient and effective system for resolving disputes, nor do I believe the legislature intended, to provide claimants with the right to*

> *pick a forum and when dissatisfied with that result, pursue the same claim again in another forum.*

[67] Here, the Claimant elected initially to file his claim for failure to receive minimum wage with the Director of Labour Standards. That decision was affirmed by the Labour Board. Having made that election, the Claimant cannot then come to the common law courts, including the Small Claims Court seeking an additional remedy.

[68] It seems to me that the decision of Justice Duncan in the *Fredericks* case is very much on point with the situation in this present case. Of course, being a superior Court to the Small Claims Court that decision is binding on the Small Claims Court. I am compelled to follow it and apply it in a case of similar facts. While the claim in the *Fredericks* case was for overtime pay, I see no material distinction between that and a claim for minimum wage.

[69] I see no basis to distinguish the *Fredericks* case and none has been offered by opposing counsel. Therefore, for this reason, I would dismiss the Claimant's claim.

Summary

[70] For the reasons discussed above, I am dismissing the claim herein for two separate reasons. First, the claim was filed out of the time requirements of the *Limitations of Actions Act*.

[71] Secondly, on the authority of the *Fredericks v. 2753014 Canada Inc.* case, I find that Mr. Hackett has exhausted his remedies at law having already pursued the matter under the provisions of the Nova Scotia *Labour Standards Code*.

[72] Having ruled against the Claimant on both of these grounds, I find it unnecessary to consider the other issues raised by the parties.

[73] As well, on the basis of failing to file the counterclaim within the two-year period of the *Limitation of Actions Act*, I find that it must be dismissed.

[74] Under the Small Claims Court regulations, the Court has discretion to award costs to the successful party. In this case there has been mixed success with the Defendant wholly successful on the main claim and the Claimant wholly successful on the Defence of the Counterclaim. In the circumstances, I will not award costs to either party.

ORDER

[75] It is hereby ordered that the herein Claim is dismissed without costs to either party.

[76] It is further ordered that the Counterclaim is dismissed without costs to either party.

DATED at Halifax, Nova Scotia, this 4th day of June, 2020.

MICHAEL J. O'HARA
ADJUDICATOR